

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3850

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## AN ACT

To improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Credit Rating Agency  
5 Reform Act of 2006”.

1 **SEC. 2. FINDINGS.**

2       Upon the basis of facts disclosed by the record and  
3 report of the Securities and Exchange Commission made  
4 pursuant to section 702 of the Sarbanes-Oxley Act of  
5 2002 (116 Stat. 797), hearings before the Committee on  
6 Banking, Housing, and Urban Affairs of the Senate and  
7 the Committee on Financial Services of the House of Rep-  
8 resentatives during the 108th and 109th Congresses, com-  
9 ment letters to the concept releases and proposed rules  
10 of the Commission, and facts otherwise disclosed and  
11 ascertained, Congress finds that credit rating agencies are  
12 of national importance, in that, among other things—

13           (1) their ratings, publications, writings, anal-  
14 yses, and reports are furnished and distributed, and  
15 their contracts, subscription agreements, and other  
16 arrangements with clients are negotiated and per-  
17 formed, by the use of the mails and other means and  
18 instrumentalities of interstate commerce;

19           (2) their ratings, publications, writings, anal-  
20 yses, and reports customarily relate to the purchase  
21 and sale of securities traded on securities exchanges  
22 and in interstate over-the-counter markets, securities  
23 issued by companies engaged in business in inter-  
24 state commerce, and securities issued by national  
25 banks and member banks of the Federal Reserve  
26 System;

1           (3) the foregoing transactions occur in such vol-  
 2           ume as substantially to affect interstate commerce,  
 3           the securities markets, the national banking system,  
 4           and the national economy;

5           (4) the oversight of such credit rating agencies  
 6           serves the compelling interest of investor protection;

7           (5) the 2 largest credit rating agencies serve  
 8           the vast majority of the market, and additional com-  
 9           petition is in the public interest; and

10          (6) the Commission has indicated that it needs  
 11          statutory authority to oversee the credit rating in-  
 12          dustry.

13 **SEC. 3. DEFINITIONS.**

14          (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
 15          3(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
 16          78c(a)) is amended by adding at the end the following new  
 17          paragraphs:

18                 “(60) CREDIT RATING.—The term ‘credit rat-  
 19                 ing’ means an assessment of the creditworthiness of  
 20                 an obligor as an entity or with respect to specific se-  
 21                 curities or money market instruments.

22                 “(61) CREDIT RATING AGENCY.—The term  
 23                 ‘credit rating agency’ means any person—

24                         “(A) engaged in the business of issuing  
 25                         credit ratings on the Internet or through an-

1 other readily accessible means, for free or for a  
2 reasonable fee, but does not include a commer-  
3 cial credit reporting company;

4 “(B) employing either a quantitative or  
5 qualitative model, or both, to determine credit  
6 ratings; and

7 “(C) receiving fees from either issuers, in-  
8 vestors, or other market participants, or a com-  
9 bination thereof.

10 “(62) **NATIONALLY RECOGNIZED STATISTICAL**  
11 **RATING ORGANIZATION.**—The term ‘nationally rec-  
12 ognized statistical rating organization’ means a cred-  
13 it rating agency that—

14 “(A) has been in business as a credit rat-  
15 ing agency for at least the 3 consecutive years  
16 immediately preceding the date of its applica-  
17 tion for registration under section 15E;

18 “(B) issues credit ratings certified by  
19 qualified institutional buyers, in accordance  
20 with section 15E(a)(1)(B)(ix), with respect to—

21 “(i) financial institutions, brokers, or  
22 dealers;

23 “(ii) insurance companies;

24 “(iii) corporate issuers;

1           “(iv) issuers of asset-backed securities  
2           (as that term is defined in section 1101(c)  
3           of part 229 of title 17, Code of Federal  
4           Regulations, as in effect on the date of en-  
5           actment of this paragraph);

6           “(v) issuers of government securities,  
7           municipal securities, or securities issued by  
8           a foreign government; or

9           “(vi) a combination of one or more  
10          categories of obligors described in any of  
11          clauses (i) through (v); and

12          “(C) is registered under section 15E.

13          “(63) PERSON ASSOCIATED WITH A NATION-  
14          ALLY RECOGNIZED STATISTICAL RATING ORGANIZA-  
15          TION.—The term ‘person associated with’ a nation-  
16          ally recognized statistical rating organization means  
17          any partner, officer, director, or branch manager of  
18          a nationally recognized statistical rating organiza-  
19          tion (or any person occupying a similar status or  
20          performing similar functions), any person directly or  
21          indirectly controlling, controlled by, or under com-  
22          mon control with a nationally recognized statistical  
23          rating organization, or any employee of a nationally  
24          recognized statistical rating organization.

1           “(64) QUALIFIED INSTITUTIONAL BUYER.—The  
2 term ‘qualified institutional buyer’ has the meaning  
3 given such term in section 230.144A(a) of title 17,  
4 Code of Federal Regulations, or any successor there-  
5 to.”.

6           (b) APPLICABLE DEFINITIONS.—As used in this  
7 Act—

8           (1) the term “Commission” means the Securi-  
9 ties and Exchange Commission; and

10           (2) the term “nationally recognized statistical  
11 rating organization” has the same meaning as in  
12 section 3(a)(62) of the Securities Exchange Act of  
13 1934, as added by this Act.

14 **SEC. 4. REGISTRATION OF NATIONALLY RECOGNIZED STA-**  
15 **TISTICAL RATING ORGANIZATIONS.**

16           (a) AMENDMENT.—The Securities Exchange Act of  
17 1934 is amended by inserting after section 15D (15  
18 U.S.C. 78o–6) the following new section:

19 **“SEC. 15E. REGISTRATION OF NATIONALLY RECOGNIZED**  
20 **STATISTICAL RATING ORGANIZATIONS.**

21           “(a) REGISTRATION PROCEDURES.—

22           “(1) APPLICATION FOR REGISTRATION.—

23           “(A) IN GENERAL.—A credit rating agency  
24 that elects to be treated as a nationally recog-  
25 nized statistical rating organization for pur-

1           poses of this title (in this section referred to as  
2           the ‘applicant’), shall furnish to the Commis-  
3           sion an application for registration, in such  
4           form as the Commission shall require, by rule  
5           or regulation issued in accordance with sub-  
6           section (n), and containing the information de-  
7           scribed in subparagraph (B).

8           “(B) REQUIRED INFORMATION.—An appli-  
9           cation for registration under this section shall  
10          contain information regarding—

11                 “(i) credit ratings performance meas-  
12                 urement statistics over short-term, mid-  
13                 term, and long-term periods (as applicable)  
14                 of the applicant;

15                 “(ii) the procedures and methodolo-  
16                 gies that the applicant uses in determining  
17                 credit ratings;

18                 “(iii) policies or procedures adopted  
19                 and implemented by the applicant to pre-  
20                 vent the misuse, in violation of this title  
21                 (or the rules and regulations hereunder),  
22                 of material, nonpublic information;

23                 “(iv) the organizational structure of  
24                 the applicant;

1           “(v) whether or not the applicant has  
2 in effect a code of ethics, and if not, the  
3 reasons therefor;

4           “(vi) any conflict of interest relating  
5 to the issuance of credit ratings by the ap-  
6 plicant;

7           “(vii) the categories described in any  
8 of clauses (i) through (v) of section  
9 3(a)(62)(B) with respect to which the ap-  
10 plicant intends to apply for registration  
11 under this section;

12           “(viii) on a confidential basis, a list of  
13 the 20 largest issuers and subscribers that  
14 use the credit rating services of the appli-  
15 cant, by amount of net revenues received  
16 therefrom in the fiscal year immediately  
17 preceding the date of submission of the ap-  
18 plication;

19           “(ix) on a confidential basis, as to  
20 each applicable category of obligor de-  
21 scribed in any of clauses (i) through (v) of  
22 section 3(a)(62)(B), written certifications  
23 described in subparagraph (C), except as  
24 provided in subparagraph (D); and

1           “(x) any other information and docu-  
2           ments concerning the applicant and any  
3           person associated with such applicant as  
4           the Commission, by rule, may prescribe as  
5           necessary or appropriate in the public in-  
6           terest or for the protection of investors.

7           “(C) WRITTEN CERTIFICATIONS.—Written  
8           certifications required by subparagraph  
9           (B)(ix)—

10           “(i) shall be provided from not fewer  
11           than 10 qualified institutional buyers, none  
12           of which is affiliated with the applicant;

13           “(ii) may address more than one cat-  
14           egory of obligors described in any of  
15           clauses (i) through (v) of section  
16           3(a)(62)(B);

17           “(iii) shall include not fewer than 2  
18           certifications for each such category of ob-  
19           ligor; and

20           “(iv) shall state that the qualified in-  
21           stitutional buyer—

22           “(I) meets the definition of a  
23           qualified institutional buyer under  
24           section 3(a)(64); and

1                   “(II) has used the credit ratings  
2                   of the applicant for at least the 3  
3                   years immediately preceding the date  
4                   of the certification in the subject cat-  
5                   egory or categories of obligors.

6                   “(D) EXEMPTION FROM CERTIFICATION  
7                   REQUIREMENT.—A written certification under  
8                   subparagraph (B)(ix) is not required with re-  
9                   spect to any credit rating agency which has re-  
10                  ceived, or been the subject of, a no-action letter  
11                  from the staff of the Commission prior to Au-  
12                  gust 2, 2006, stating that such staff would not  
13                  recommend enforcement action against any  
14                  broker or dealer that considers credit ratings  
15                  issued by such credit rating agency to be rat-  
16                  ings from a nationally recognized statistical rat-  
17                  ing organization.

18                  “(E) LIMITATION ON LIABILITY OF QUALI-  
19                  FIED INSTITUTIONAL BUYERS.—No qualified  
20                  institutional buyer shall be liable in any private  
21                  right of action for any opinion or statement ex-  
22                  pressed in a certification made pursuant to sub-  
23                  paragraph (B)(ix).

24                  “(2) REVIEW OF APPLICATION.—

1           “(A) INITIAL DETERMINATION.—Not later  
2 than 90 days after the date on which the appli-  
3 cation for registration is furnished to the Com-  
4 mission under paragraph (1) (or within such  
5 longer period as to which the applicant con-  
6 sents) the Commission shall—

7           “(i) by order, grant such registration  
8 for ratings in the subject category or cat-  
9 egories of obligors, as described in clauses  
10 (i) through (v) of section 3(a)(62)(B); or

11           “(ii) institute proceedings to deter-  
12 mine whether registration should be de-  
13 nied.

14           “(B) CONDUCT OF PROCEEDINGS.—

15           “(i) CONTENT.—Proceedings referred  
16 to in subparagraph (A)(ii) shall—

17           “(I) include notice of the grounds  
18 for denial under consideration and an  
19 opportunity for hearing; and

20           “(II) be concluded not later than  
21 120 days after the date on which the  
22 application for registration is fur-  
23 nished to the Commission under para-  
24 graph (1).

1           “(ii) DETERMINATION.—At the con-  
2           clusion of such proceedings, the Commis-  
3           sion, by order, shall grant or deny such ap-  
4           plication for registration.

5           “(iii) EXTENSION AUTHORIZED.—The  
6           Commission may extend the time for con-  
7           clusion of such proceedings for not longer  
8           than 90 days, if it finds good cause for  
9           such extension and publishes its reasons  
10          for so finding, or for such longer period as  
11          to which the applicant consents.

12          “(C) GROUNDS FOR DECISION.—The Com-  
13          mission shall grant registration under this  
14          subsection—

15                 “(i) if the Commission finds that the  
16                 requirements of this section are satisfied;  
17                 and

18                 “(ii) unless the Commission finds (in  
19                 which case the Commission shall deny such  
20                 registration) that—

21                         “(I) the applicant does not have  
22                         adequate financial and managerial re-  
23                         sources to consistently produce credit  
24                         ratings with integrity and to materi-  
25                         ally comply with the procedures and

1 methodologies disclosed under para-  
2 graph (1)(B) and with subsections  
3 (g), (h), (i), and (j); or

4 “(II) if the applicant were so reg-  
5 istered, its registration would be sub-  
6 ject to suspension or revocation under  
7 subsection (d).

8 “(3) PUBLIC AVAILABILITY OF INFORMATION.—  
9 Subject to section 24, the Commission shall, by rule,  
10 require a nationally recognized statistical rating or-  
11 ganization, upon the granting of registration under  
12 this section, to make the information and documents  
13 submitted to the Commission in its completed appli-  
14 cation for registration, or in any amendment sub-  
15 mitted under paragraph (1) or (2) of subsection (b),  
16 publicly available on its website, or through another  
17 comparable, readily accessible means, except as pro-  
18 vided in clauses (viii) and (ix) of paragraph (1)(B).

19 “(b) UPDATE OF REGISTRATION.—

20 “(1) UPDATE.—Each nationally recognized sta-  
21 tistical rating organization shall promptly amend its  
22 application for registration under this section if any  
23 information or document provided therein becomes  
24 materially inaccurate, except that a nationally recog-

1 nized statistical rating organization is not required  
2 to amend—

3 “(A) the information required to be fur-  
4 nished under subsection (a)(1)(B)(i) by fur-  
5 nishing information under this paragraph, but  
6 shall amend such information in the annual  
7 submission of the organization under paragraph  
8 (2) of this subsection; or

9 “(B) the certifications required to be pro-  
10 vided under subsection (a)(1)(B)(ix) by fur-  
11 nishing information under this paragraph.

12 “(2) CERTIFICATION.—Not later than 90 days  
13 after the end of each calendar year, each nationally  
14 recognized statistical rating organization shall fur-  
15 nish to the Commission an amendment to its reg-  
16 istration, in such form as the Commission, by rule,  
17 may prescribe as necessary or appropriate in the  
18 public interest or for the protection of investors—

19 “(A) certifying that the information and  
20 documents in the application for registration of  
21 such nationally recognized statistical rating or-  
22 ganization (other than the certifications re-  
23 quired under subsection (a)(1)(B)(ix)) continue  
24 to be accurate; and

1           “(B) listing any material change that oc-  
2           curred to such information or documents during  
3           the previous calendar year.

4           “(c) ACCOUNTABILITY FOR RATINGS PROCE-  
5 DURES.—

6           “(1) AUTHORITY.—The Commission shall have  
7           exclusive authority to enforce the provisions of this  
8           section in accordance with this title with respect to  
9           any nationally recognized statistical rating organiza-  
10          tion, if such nationally recognized statistical rating  
11          organization issues credit ratings in material con-  
12          travention of those procedures relating to such na-  
13          tionally recognized statistical rating organization, in-  
14          cluding procedures relating to the prevention of mis-  
15          use of nonpublic information and conflicts of inter-  
16          est, that such nationally recognized statistical rating  
17          organization—

18                 “(A) includes in its application for reg-  
19                 istration under subsection (a)(1)(B)(ii); or

20                 “(B) makes and disseminates in reports  
21                 pursuant to section 17(a) or the rules and regu-  
22                 lations thereunder.

23           “(2) LIMITATION.—The rules and regulations  
24           that the Commission may prescribe pursuant to this  
25           title, as they apply to nationally recognized statis-

1 tical rating organizations, shall be narrowly tailored  
2 to meet the requirements of this title applicable to  
3 nationally recognized statistical rating organizations.  
4 Notwithstanding any other provision of law, neither  
5 the Commission nor any State (or political subdivi-  
6 sion thereof) may regulate the substance of credit  
7 ratings or the procedures and methodologies by  
8 which any nationally recognized statistical rating or-  
9 ganization determines credit ratings.

10 “(d) CENSURE, DENIAL, OR SUSPENSION OF REG-  
11 ISTRATION; NOTICE AND HEARING.—The Commission, by  
12 order, shall censure, place limitations on the activities,  
13 functions, or operations of, suspend for a period not ex-  
14 ceeding 12 months, or revoke the registration of any na-  
15 tionally recognized statistical rating organization if the  
16 Commission finds, on the record after notice and oppor-  
17 tunity for hearing, that such censure, placing of limita-  
18 tions, suspension, or revocation is necessary for the protec-  
19 tion of investors and in the public interest and that such  
20 nationally recognized statistical rating organization, or  
21 any person associated with such an organization, whether  
22 prior to or subsequent to becoming so associated—

23 “(1) has committed or omitted any act, or is  
24 subject to an order or finding, enumerated in sub-  
25 paragraph (A), (D), (E), (H), or (G) of section

1 15(b)(4), has been convicted of any offense specified  
2 in section 15(b)(4)(B), or is enjoined from any ac-  
3 tion, conduct, or practice specified in subparagraph  
4 (C) of section 15(b)(4), during the 10-year period  
5 preceding the date of commencement of the pro-  
6 ceedings under this subsection, or at any time there-  
7 after;

8 “(2) has been convicted during the 10-year pe-  
9 riod preceding the date on which an application for  
10 registration is furnished to the Commission under  
11 this section, or at any time thereafter, of—

12 “(A) any crime that is punishable by im-  
13 prisonment for 1 or more years, and that is not  
14 described in section 15(b)(4)(B); or

15 “(B) a substantially equivalent crime by a  
16 foreign court of competent jurisdiction;

17 “(3) is subject to any order of the Commission  
18 barring or suspending the right of the person to be  
19 associated with a nationally recognized statistical  
20 rating organization;

21 “(4) fails to furnish the certifications required  
22 under subsection (b)(2); or

23 “(5) fails to maintain adequate financial and  
24 managerial resources to consistently produce credit  
25 ratings with integrity.

1 “(e) TERMINATION OF REGISTRATION.—

2 “(1) VOLUNTARY WITHDRAWAL.—A nationally  
3 recognized statistical rating organization may, upon  
4 such terms and conditions as the Commission may  
5 establish as necessary in the public interest or for  
6 the protection of investors, withdraw from registra-  
7 tion by furnishing a written notice of withdrawal to  
8 the Commission.

9 “(2) COMMISSION AUTHORITY.—In addition to  
10 any other authority of the Commission under this  
11 title, if the Commission finds that a nationally rec-  
12 ognized statistical rating organization is no longer in  
13 existence or has ceased to do business as a credit  
14 rating agency, the Commission, by order, shall can-  
15 cel the registration under this section of such na-  
16 tionally recognized statistical rating organization.

17 “(f) REPRESENTATIONS.—

18 “(1) BAN ON REPRESENTATIONS OF SPONSOR-  
19 SHIP BY UNITED STATES OR AGENCY THEREOF.—It  
20 shall be unlawful for any nationally recognized sta-  
21 tistical rating organization to represent or imply in  
22 any manner whatsoever that such nationally recog-  
23 nized statistical rating organization has been des-  
24 ignated, sponsored, recommended, or approved, or  
25 that the abilities or qualifications thereof have in

1 any respect been passed upon, by the United States  
2 or any agency, officer, or employee thereof.

3 “(2) BAN ON REPRESENTATION AS NRSRO OF  
4 UNREGISTERED CREDIT RATING AGENCIES.—It shall  
5 be unlawful for any credit rating agency that is not  
6 registered under this section as a nationally recog-  
7 nized statistical rating organization to state that  
8 such credit rating agency is a nationally recognized  
9 statistical rating organization registered under this  
10 title.

11 “(3) STATEMENT OF REGISTRATION UNDER SE-  
12 CURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No  
13 provision of paragraph (1) shall be construed to pro-  
14 hibit a statement that a nationally recognized statis-  
15 tical rating organization is a nationally recognized  
16 statistical rating organization under this title, if  
17 such statement is true in fact and if the effect of  
18 such registration is not misrepresented.

19 “(g) PREVENTION OF MISUSE OF NONPUBLIC IN-  
20 FORMATION.—

21 “(1) ORGANIZATION POLICIES AND PROCE-  
22 DURES.—Each nationally recognized statistical rat-  
23 ing organization shall establish, maintain, and en-  
24 force written policies and procedures reasonably de-  
25 signed, taking into consideration the nature of the

1 business of such nationally recognized statistical rat-  
2 ing organization, to prevent the misuse in violation  
3 of this title, or the rules or regulations hereunder,  
4 of material, nonpublic information by such nationally  
5 recognized statistical rating organization or any per-  
6 son associated with such nationally recognized statis-  
7 tical rating organization.

8 “(2) COMMISSION AUTHORITY.—The Commis-  
9 sion shall issue final rules in accordance with sub-  
10 section (n) to require specific policies or procedures  
11 that are reasonably designed to prevent misuse in  
12 violation of this title (or the rules or regulations  
13 hereunder) of material, nonpublic information.

14 “(h) MANAGEMENT OF CONFLICTS OF INTEREST.—

15 “(1) ORGANIZATION POLICIES AND PROCE-  
16 DURES.—Each nationally recognized statistical rat-  
17 ing organization shall establish, maintain, and en-  
18 force written policies and procedures reasonably de-  
19 signed, taking into consideration the nature of the  
20 business of such nationally recognized statistical rat-  
21 ing organization and affiliated persons and affiliated  
22 companies thereof, to address and manage any con-  
23 flicts of interest that can arise from such business.

24 “(2) COMMISSION AUTHORITY.—The Commis-  
25 sion shall issue final rules in accordance with sub-

1 section (n) to prohibit, or require the management  
2 and disclosure of, any conflicts of interest relating to  
3 the issuance of credit ratings by a nationally recog-  
4 nized statistical rating organization, including, with-  
5 out limitation, conflicts of interest relating to—

6 “(A) the manner in which a nationally rec-  
7 ognized statistical rating organization is com-  
8 pensated by the obligor, or any affiliate of the  
9 obligor, for issuing credit ratings or providing  
10 related services;

11 “(B) the provision of consulting, advisory,  
12 or other services by a nationally recognized sta-  
13 tistical rating organization, or any person asso-  
14 ciated with such nationally recognized statistical  
15 rating organization, to the obligor, or any affil-  
16 iate of the obligor;

17 “(C) business relationships, ownership in-  
18 terests, or any other financial or personal inter-  
19 ests between a nationally recognized statistical  
20 rating organization, or any person associated  
21 with such nationally recognized statistical rat-  
22 ing organization, and the obligor, or any affil-  
23 iate of the obligor;

24 “(D) any affiliation of a nationally recog-  
25 nized statistical rating organization, or any per-

1 son associated with such nationally recognized  
2 statistical rating organization, with any person  
3 that underwrites the securities or money market  
4 instruments that are the subject of a credit rat-  
5 ing; and

6 “(E) any other potential conflict of inter-  
7 est, as the Commission deems necessary or ap-  
8 propriate in the public interest or for the pro-  
9 tection of investors.

10 “(i) PROHIBITED CONDUCT.—

11 “(1) PROHIBITED ACTS AND PRACTICES.—The  
12 Commission shall issue final rules in accordance  
13 with subsection (n) to prohibit any act or practice  
14 relating to the issuance of credit ratings by a nation-  
15 ally recognized statistical rating organization that  
16 the Commission determines to be unfair, coercive, or  
17 abusive, including any act or practice relating to—

18 “(A) conditioning or threatening to condi-  
19 tion the issuance of a credit rating on the pur-  
20 chase by the obligor or an affiliate thereof of  
21 other services or products, including pre-credit  
22 rating assessment products, of the nationally  
23 recognized statistical rating organization or any  
24 person associated with such nationally recog-  
25 nized statistical rating organization;

1           “(B) lowering or threatening to lower a  
2           credit rating on, or refusing to rate, securities  
3           or money market instruments issued by an  
4           asset pool or as part of any asset-backed or  
5           mortgage-backed securities transaction, unless a  
6           portion of the assets within such pool or part  
7           of such transaction, as applicable, also is rated  
8           by the nationally recognized statistical rating  
9           organization; or

10           “(C) modifying or threatening to modify a  
11           credit rating or otherwise departing from its  
12           adopted systematic procedures and methodolo-  
13           gies in determining credit ratings, based on  
14           whether the obligor, or an affiliate of the obli-  
15           gor, purchases or will purchase the credit rating  
16           or any other service or product of the nationally  
17           recognized statistical rating organization or any  
18           person associated with such organization.

19           “(2) RULE OF CONSTRUCTION.—Nothing in  
20           paragraph (1), or in any rules or regulations adopt-  
21           ed thereunder, may be construed to modify, impair,  
22           or supersede the operation of any of the antitrust  
23           laws (as defined in the first section of the Clayton  
24           Act, except that such term includes section 5 of the  
25           Federal Trade Commission Act, to the extent that

1 such section 5 applies to unfair methods of competi-  
2 tion).

3 “(j) DESIGNATION OF COMPLIANCE OFFICER.—Each  
4 nationally recognized statistical rating organization shall  
5 designate an individual responsible for administering the  
6 policies and procedures that are required to be established  
7 pursuant to subsections (g) and (h), and for ensuring com-  
8 pliance with the securities laws and the rules and regula-  
9 tions thereunder, including those promulgated by the  
10 Commission pursuant to this section.

11 “(k) STATEMENTS OF FINANCIAL CONDITION.—  
12 Each nationally recognized statistical rating organization  
13 shall, on a confidential basis, furnish to the Commission,  
14 at intervals determined by the Commission, such financial  
15 statements, certified (if required by the rules or regula-  
16 tions of the Commission) by an independent public ac-  
17 countant, and information concerning its financial condi-  
18 tion, as the Commission, by rule, may prescribe as nec-  
19 essary or appropriate in the public interest or for the pro-  
20 tection of investors.

21 “(l) SOLE METHOD OF REGISTRATION.—

22 “(1) IN GENERAL.—On and after the effective  
23 date of this section, a credit rating agency may only  
24 be registered as a nationally recognized statistical

1 rating organization for any purpose in accordance  
2 with this section.

3 “(2) PROHIBITION ON RELIANCE ON NO-ACTION  
4 RELIEF.—On and after the effective date of this  
5 section—

6 “(A) an entity that, before that date, re-  
7 ceived advice, approval, or a no-action letter  
8 from the Commission or staff thereof to be  
9 treated as a nationally recognized statistical  
10 rating organization pursuant to the Commission  
11 rule at section 240.15c3–1 of title 17, Code of  
12 Federal Regulations, may represent itself or act  
13 as a nationally recognized statistical rating or-  
14 ganization only—

15 “(i) during Commission consideration  
16 of the application, if such entity has fur-  
17 nished an application for registration  
18 under this section; and

19 “(ii) on and after the date of approval  
20 of its application for registration under  
21 this section; and

22 “(B) the advice, approval, or no-action let-  
23 ter described in subparagraph (A) shall be void.

24 “(3) NOTICE TO OTHER AGENCIES.—Not later  
25 than 30 days after the date of enactment of this sec-

1 tion, the Commission shall give notice of the actions  
2 undertaken pursuant to this section to each Federal  
3 agency which employs in its rules and regulations  
4 the term ‘nationally recognized statistical rating or-  
5 ganization’ (as that term is used under Commission  
6 rule 15c3–1 (17 C.F.R. 240.15c3–1), as in effect on  
7 the date of enactment of this section).

8 “(m) RULES OF CONSTRUCTION.—

9 “(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR  
10 DEFENSES.—Registration under and compliance  
11 with this section does not constitute a waiver of, or  
12 otherwise diminish, any right, privilege, or defense  
13 that a nationally recognized statistical rating organi-  
14 zation may otherwise have under any provision of  
15 State or Federal law, including any rule, regulation,  
16 or order thereunder.

17 “(2) NO PRIVATE RIGHT OF ACTION.—Nothing  
18 in this section may be construed as creating any pri-  
19 vate right of action, and no report furnished by a  
20 nationally recognized statistical rating organization  
21 in accordance with this section or section 17 shall  
22 create a private right of action under section 18 or  
23 any other provision of law.

24 “(n) REGULATIONS.—

1           “(1) NEW PROVISIONS.—Such rules and regula-  
2           tions as are required by this section or are otherwise  
3           necessary to carry out this section, including the ap-  
4           plication form required under subsection (a)—

5                   “(A) shall be issued by the Commission in  
6                   final form, not later than 270 days after the  
7                   date of enactment of this section; and

8                   “(B) shall become effective not later than  
9                   270 days after the date of enactment of this  
10                  section.

11           “(2) REVIEW OF EXISTING REGULATIONS.—Not  
12           later than 270 days after the date of enactment of  
13           this section, the Commission shall—

14                   “(A) review its existing rules and regula-  
15                   tions which employ the term ‘nationally recog-  
16                   nized statistical rating organization’ or  
17                   ‘NRSRO’; and

18                   “(B) amend or revise such rules and regu-  
19                   lations in accordance with the purposes of this  
20                   section, as the Commission may prescribe as  
21                   necessary or appropriate in the public interest  
22                   or for the protection of investors.

23           “(o) NRSROS SUBJECT TO COMMISSION AUTHOR-  
24           ITY.—

1           “(1) IN GENERAL.—No provision of the laws of  
2           any State or political subdivision thereof requiring  
3           the registration, licensing, or qualification as a cred-  
4           it rating agency or a nationally recognized statistical  
5           rating organization shall apply to any nationally rec-  
6           ognized statistical rating organization or person em-  
7           ployed by or working under the control of a nation-  
8           ally recognized statistical rating organization.

9           “(2) LIMITATION.—Nothing in this subsection  
10          prohibits the securities commission (or any agency  
11          or office performing like functions) of any State  
12          from investigating and bringing an enforcement ac-  
13          tion with respect to fraud or deceit against any na-  
14          tionally recognized statistical rating organization or  
15          person associated with a nationally recognized statis-  
16          tical rating organization.

17          “(p) APPLICABILITY.—This section, other than sub-  
18          section (n), which shall apply on the date of enactment  
19          of this section, shall apply on the earlier of—

20                 “(1) the date on which regulations are issued in  
21                 final form under subsection (n)(1); or

22                 “(2) 270 days after the date of enactment of  
23                 this section.”.

24          (b) CONFORMING AMENDMENTS.—

1           (1) SECURITIES EXCHANGE ACT OF 1934.—The  
2       Securities Exchange Act of 1934 (15 U.S.C. 78 et  
3       seq.) is amended—

4           (A) in section 15(b)(4) (15 U.S.C.  
5       78o(b)(4))—

6           (i) in subparagraph (B)(ii), by insert-  
7       ing “nationally recognized statistical rating  
8       organization,” after “transfer agent,”; and

9           (ii) in subparagraph (C), by inserting  
10       “nationally recognized statistical rating or-  
11       ganization,” after “transfer agent,”; and

12          (B) in section 21B(a) (15 U.S.C. 78u-  
13       2(a)), by inserting “15E,” after “15C,”.

14          (2) INVESTMENT COMPANY ACT OF 1940.—The  
15       Investment Company Act of 1940 (15 U.S.C. 80a et  
16       seq.) is amended—

17          (A) in section 2(a) (15 U.S.C. 80a-2(a)),  
18       by adding at the end the following new para-  
19       graph:

20          “(53) The term ‘credit rating agency’ has the  
21       same meaning as in section 3 of the Securities Ex-  
22       change Act of 1934.”; and

23          (B) in section 9(a) (15 U.S.C. 80a-9(a))—

1 (i) in paragraph (1), by inserting  
2 “credit rating agency,” after “transfer  
3 agent,”; and

4 (ii) in paragraph (2), by inserting  
5 “credit rating agency,” after “transfer  
6 agent,”.

7 (3) INVESTMENT ADVISERS ACT OF 1940.—The  
8 Investment Advisers Act of 1940 (15 U.S.C. 80b et  
9 seq.) is amended—

10 (A) in section 202(a) (15 U.S.C. 80b–  
11 2(a)), by adding at the end the following new  
12 paragraph:

13 “(28) The term ‘credit rating agency’ has the  
14 same meaning as in section 3 of the Securities Ex-  
15 change Act of 1934.”;

16 (B) in section 202(a)(11) (15 U.S.C. 80b–  
17 2(a)(11)), by striking “or (F)” and inserting  
18 the following: “(F) any nationally recognized  
19 statistical rating organization, as that term is  
20 defined in section 3(a)(62) of the Securities Ex-  
21 change Act of 1934, unless such organization  
22 engages in issuing recommendations as to pur-  
23 chasing, selling, or holding securities or in man-  
24 aging assets, consisting in whole or in part of  
25 securities, on behalf of others; or (G)”;

1 (C) in section 203(e) (15 U.S.C. 80b–  
2 3(e))—

3 (i) in paragraph (2)(B), by inserting  
4 “credit rating agency,” after “transfer  
5 agent,”; and

6 (ii) in paragraph (4), by inserting  
7 “credit rating agency,” after “transfer  
8 agent,”.

9 (4) HOUSING AND COMMUNITY DEVELOPMENT  
10 ACT OF 1992.—Section 1319 of the Housing and  
11 Community Development Act of 1992 (12 U.S.C.  
12 4519) is amended by striking “effectively” and all  
13 that follows through “broker-dealers” and inserting  
14 “that is a nationally recognized statistical rating or-  
15 ganization, as such term is defined in section 3(a)  
16 of the Securities Exchange Act of 1934”.

17 (5) HIGHER EDUCATION ACT OF 1965.—Section  
18 439(r)(15)(A) of the Higher Education Act of 1965  
19 (20 U.S.C. 1087–2(r)(15)(A)) is amended by strik-  
20 ing “means any entity recognized as such by the Se-  
21 curities and Exchange Commission” and inserting  
22 “means any nationally recognized statistical rating  
23 organization, as that term is defined in section 3(a)  
24 of the Securities Exchange Act of 1934”.

1           (6) TITLE 23.—Section 181(11) of title 23,  
2           United States Code, is amended by striking “identi-  
3           fied by the Securities and Exchange Commission as  
4           a nationally recognized statistical rating organiza-  
5           tion” and inserting “registered with the Securities  
6           and Exchange Commission as a nationally recog-  
7           nized statistical rating organization, as that term is  
8           defined in section 3(a) of the Securities Exchange  
9           Act of 1934”.

10 **SEC. 5. ANNUAL AND OTHER REPORTS.**

11           Section 17(a)(1) of the Securities Exchange Act of  
12 1934 (15 U.S.C. 78q(a)(1)) is amended—

13           (1) by inserting “nationally recognized statis-  
14           tical rating organization,” after “registered transfer  
15           agent,”; and

16           (2) by adding at the end the following: “Any re-  
17           port that a nationally recognized statistical rating  
18           organization is required by Commission rules under  
19           this paragraph to make and disseminate to the Com-  
20           mission shall be deemed furnished to the Commis-  
21           sion.”.

22 **SEC. 6. COMMISSION ANNUAL REPORT.**

23           The Commission shall submit an annual report to the  
24           Committee on Banking, Housing, and Urban Affairs of  
25           the Senate and the Committee on Financial Services of

1 the House of Representatives that, with respect to the  
2 year to which the report relates—

3 (1) identifies applicants for registration under  
4 section 15E of the Securities Exchange Act of 1934,  
5 as added by this Act;

6 (2) specifies the number of and actions taken  
7 on such applications; and

8 (3) specifies the views of the Commission on the  
9 state of competition, transparency, and conflicts of  
10 interest among nationally recognized statistical rat-  
11 ing organizations.

12 **SEC. 7. GAO STUDY AND REPORT REGARDING NATIONALLY**  
13 **RECOGNIZED STATISTICAL RATING ORGANI-**  
14 **ZATIONS.**

15 (a) **STUDY REQUIRED.**—The Comptroller General of  
16 the United States shall conduct a study—

17 (1) to determine the impact of this Act and the  
18 amendments made by this Act on—

19 (A) the quality of credit ratings issued by  
20 nationally recognized statistical ratings organi-  
21 zations;

22 (B) the financial markets;

23 (C) competition among credit rating agen-  
24 cies;

1 (D) the incidence of inappropriate conflicts  
2 of interest and sales practices by nationally rec-  
3 ognized statistical rating organizations;

4 (E) the process for registering as a nation-  
5 ally recognized statistical rating organization;  
6 and

7 (F) such other matters relevant to the im-  
8 plementation of this Act and the amendments  
9 made by this Act, as the Comptroller General  
10 deems necessary to bring to the attention of the  
11 Congress;

12 (2) to identify problems, if any, that have re-  
13 sulted from the implementation of this Act and the  
14 amendments made by this Act; and

15 (3) to recommend solutions, including any legis-  
16 lative or regulatory solutions, to any problems iden-  
17 tified under paragraphs (1) and (2).

18 (b) REPORT REQUIRED.—Not earlier than 3 years  
19 nor later than 4 years after the date of enactment of this  
20 Act, the Comptroller General shall submit a report on the  
21 results of the study required by this section to the Com-  
22 mittee on Banking, Housing, and Urban Affairs of the

- 1 Senate and the Committee on Financial Services of the
- 2 House of Representatives.

Passed the Senate September 22, 2006.

Attest:

*Secretary.*

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3850**

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**AN ACT**

To improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.